

PATENT COOPERATION TREATY

Rec'd PCT/PTC 03 SEP 2004

From the
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

To:

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DATE REC'D	28 June 2004
DEADLINE FINISH	23 July 2004
COMMENT	

PCT

WRITTEN OPINION
(PCT Rule 66)

Date of mailing
(day/month/year) 23.06.2004

Applicant's or agent's file reference
Magpie (PCT)

REPLY DUE

within 1 month(s)
from the above date of mailing

International application No.
PCT/GB 03/00947

International filing date (day/month/year)
06.03.2003

Priority date (day/month/year)
06.03.2002

International Patent Classification (IPC) or both national classification and IPC
H04L29/08

Applicant
SYMBIAN LIMITED et al

1. This written opinion is the **second** drawn up by this International Preliminary Examining Authority.
2. This opinion contains indications relating to the following items:
 - I Basis of the opinion
 - II Priority
 - III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
 - IV Lack of unity of invention
 - V Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
 - VI Certain documents cited
 - VII Certain defects in the international application
 - VIII Certain observations on the international application
3. The applicant is hereby invited to reply to this opinion.

When? See the time limit indicated above. The applicant may, before the expiration of that time limit, request this Authority to grant an extension, see Rule 66.2(d).

How? By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3. For the form and the language of the amendments, see Rules 66.8 and 66.9.

Also: For an additional opportunity to submit amendments, see Rule 66.4. For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4 bis. For an informal communication with the examiner, see Rule 66.6.

If no reply is filed, the international preliminary examination report will be established on the basis of this opinion.
4. The final date by which the international preliminary examination report must be established according to Rule 69.2 is: 06.07.2004

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preliminary examining authority:



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I. Basis of the opinion

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed"*):

Description, Pages

1-4, 10-19 as originally filed
5-9 received on 17.05.2004 with letter of 17.05.2004

Claims, Numbers

1-22 received on 17.05.2004 with letter of 17.05.2004

Drawings, Sheets

1/4-4/4 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
- the language of publication of the international application (under Rule 48.3(b)).
- the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- contained in the international application in written form.
- filed together with the international application in computer readable form.
- furnished subsequently to this Authority in written form.
- furnished subsequently to this Authority in computer readable form.
- The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- the description, pages:
- the claims, Nos.:
- the drawings, sheets:

5. This opinion has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

see separate sheet

6. Additional observations, if necessary:

V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims	1-24
Inventive step (IS)	Claims	1-24
Industrial applicability (IA)	Claims	-

2. Citations and explanations

see separate sheet

Re Item I

Basis of the opinion

This opinion is based on the drawings, claims 1-24 and the description pages 1-21 as originally filed, because the amendments issued on 17.05.2004 go beyond the disclosure as originally filed (Article 34(2)(b) PCT). The reasons are the following:

The feature of the amended independent claims 1, 21 and 22, that "data from **several different data suppliers** is received by the device", is not disclosed in original claims 1 and 16, contrary to what has been indicated by the applicant. Support for this amendment has also not been found in other parts of the original disclosure.

The feature of amended independent claims 1, 21 and 22, that "data from a given data supplier, **but no other supplier**, [are] displayed within [an] application", are also not disclosed in the original claims 1 and 16 contrary to what has been indicated by the applicant. The applicant further refers to figures 3 and 4, and to the description on page 12, lines 25-26. All that can be derived from these passages, is that "information from sky sports services" is shown in a display when the user selects "sport" in a menu. These passages, which appear to merely illustrate some examples and do not appear to cover all aspects of the invention, do however not teach that information from other service providers should **not** be shown under the same menu item.

Hence, the amendments filed on 17.05.2005 go beyond the disclosure as originally filed (Article 34(2)(b) PCT), and this opinion is therefore based on the claims, description and drawings as originally filed (Rule 70.2(c) PCT) .

Re Item V

Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. The following documents (D1-D4) are referred to in this communication; the numbering will be adhered to in the rest of the procedure:

D1: WO 02 17075 A (SYMBIAN LTD ;RANDALL STEPHEN (GB); FORSYTH JOHN MATTHEW (GB)) 28 February 2002 (2002-02-28) cited in the application

D2: 'ELECTRONIC CLIMATICAL SCHEDULER MECHANISM' IBM TECHNICAL DISCLOSURE BULLETIN, IBM CORP. NEW YORK, US, vol. 37, no. 4A, 1 April 1994 (1994-04-01), pages 121-122, XP000446208 ISSN: 0018-8689

D3: EUSTICE K F ET AL: 'A universal information appliance' IBM SYSTEMS JOURNAL, IBM CORP. ARMONK, NEW YORK, US, vol. 38, no. 4, 1999, pages 575-601, XP002157988 ISSN: 0018-8670

D4: EP-A-0 829 704 (ZANAVY INFORMATICS KK ;HITACHI LTD (JP)) 18 March 1998 (1998-03-18)

2. The subject-matter of claim 1 is not new for the following reasons:

2.1 Document D1 discloses, according to all the features of claim 1,

a method of providing data to a wireless information device (abstract), in which data ("weather" on page 5, line 1; "local weather conditions" on page 7, line 28) supplied from a remote service provider ("commercial data service provider" on page 4, line 21-22) is represented by an icon ("icon" on page 7, line 24) which is (a) automatically displayed within an application running on the device ("data goes automatically into an application" on page 4, line 23; "sent straight into a user's calendar application" on page 5, line 1), and which (b) changes if the data alters, in order to alert the user to new data or to represent that new data ("pushing" data under control of a remote server, and displaying "a symbol relevant to local weather conditions at the device location" on page 7, last paragraph, implicitly implies that the icon is changed when changing weather data is received from the service provider).

As a consequence, claim 1 is not allowable for lack of novelty of its subject-matter, Articles 33(1) and (2) PCT.

It should be noted that the subject-matter of claim 1 is also not new vis-a-vis to the disclosure of documents D2 (whole document), document D3 (page 589, left-hand column, paragraph 1 - right-hand column, paragraph 2), and document D4 (abstract; figure 1; column 13, line 5-24 and 39-47), which all disclose a changing presentation of information in a running application on a wireless device, in which the presented information is supplied by a remote service provider.

- 2.2 With respect to the objection raised in item 1. above, independent claims 22 and 23 do also not meet the requirements of Articles 33(1) and (2) PCT for lack of novelty of their subject-matter, because the "wireless computing device" of claim 22 and the "computer software" product of claim 23 correspond to method claim 1, wherein the features of claim 22 and 23 are identical to the features of method claim 1.
- 2.3 It should be noted that even if the applicant were to interpret claims 1, 22 and 23 in such a manner as to enable him to allege that their subject-matter were novel, based on **minor** differences between the features of these claims and those disclosed in documents D1-D4, the subject-matter of claims 1, 22 and 23 would still not involve an inventive step (Articles 33(1) and (3) PCT), having regard to the disclosure of documents D1-D4, especially as these documents disclose the same object and the same type of solution as claimed in these claims.
- 2.4 Dependent claims 2-21 do not appear to contain any additional features or method steps which, either alone or in combination with the features or method steps of any claim to which they refer, meet the requirements of the PCT with respect to novelty or inventive step, because the subject-matter of these claims relates to minor design details and is either directly derivable from the above mentioned prior art or presents standard practice.

The features of these claims are all disclosed in document D1 (abstract; figure 3; page 4, line 14 - page 6, line 2; page 7, line 22 - page 8, line 5), which is a document of the same applicant and inventor as the present application, discloses the same systems and methods as claimed in the present application, and is published **before** the claimed priority date of the current application.

3. Claim 24 does not meet the requirements of Article 6 PCT in that the matter for which protection is sought is not clearly defined. Claim 24 claims "data", which is neither an apparatus, nor a method. Hence, the category of the claim is unclear (PCT Guidelines III-4.1). Moreover, the features of the claim do not further define the "data" as claimed, but merely the way the data is processed in a wireless computing device (see also the PCT guidelines III-4.8a).
4. It is not at present apparent which part of the application could serve as a basis

for a new claim which meets all the requirements of the PCT, especially since the subject-matter of all claims is known from, or rendered obvious by document D1, and since the amendments filed by the applicant in an attempt to make the subject-matter of the claims novel over the prior art cited in the search report have resulted in an objection under Article 34(2)(b) PCT.

Should the applicant nevertheless wish to file further amendments, the following requirements should also be attended to:

- 4.1 To meet the requirements of Rule 6.3 (b) (i) and (ii) PCT, newly filed independent claims should be properly cast in the two part form, with those features which are part of the prior art (see document D1) being placed in the preamble.

If the applicant is of the opinion that a two part form of the claim would be inappropriate he is invited to provide reasons in his reply (see Guidelines III-2.3a PCT).

- 4.2 The category of claim 22 is not clear, because some of the features relate to a method of using the apparatus ("being represented", "automatically displays", "changes"), rather than clearly defining the apparatus in terms of its structural features. The intended limitations are therefore not clear from this claim (Article 6 PCT; PCT Guidelines III-4.1).
- 4.3 Dependent claim 2 further defines the subject matter by means of a disclaimer ("is not an application that is dedicated to data acquisition from servers remote from the device"), whereas the subject matter should be defined by means of positive features (Article 6 PCT; PCT Guidelines III-4.12).

In addition, the features of claim 2 following the expression "such as" are regarded as entirely optional, and should therefore be deleted (Article 6 PCT; PCT Guidelines III-4.6).

- 4.4 In claim 4, the expression "appropriate and relevant factual information" is used, which is an ambiguous expression without a well-recognised meaning. This expression should therefore be replaced by a more precise expression already disclosed in the description (Articles 6 and 34(2)(b) PCT; PCT Guidelines III-4.5).

- 4.5 The features of the claims should be provided with reference signs placed in parenthesis to increase the intelligibility of the claims (Rule 6.2 (b) PCT). This applies to both the preamble and the characterising portion of all claims.
- 4.6 In order to indicate more completely the background art useful for understanding the invention, the above-mentioned documents D1-D4 should be acknowledged in the description (Rule 5.1 (a) (ii) PCT).
- 4.7 When filing amended claims the applicant should at the same time bring the description into conformity with the amended claims (Rule 5.1 (a) (iii) PCT).
- 4.8 Part of the subject-matter of the description is not covered by the claims. Therefore, the excess subject-matter as contained in the description on page 8, line 28 - page 9, line 28, and on page 14, line 27 - page 16, line 7, should be removed. (PCT Guidelines III-4.3)
- 4.9 In amending the application care should be taken not to extend the content of the application beyond that of the application as filed, by the addition or deletion of subject-matter, in order to meet the requirements of Article 34(2) (b) PCT.

Moreover, in order to expedite the procedure the applicant is requested to indicate with his reply the locations in the application as originally filed of the passages forming a basis for any amendments which are made. If the applicant regards it as appropriate, these indications should be submitted in handwritten form on a copy of the relevant parts of the application as filed.

The applicant is requested to file amendments by way of replacement pages. He should also take into account the requirements of Rule 66.8 PCT. In particular, fair copies of the amendments should be filed in triplicate.